

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY

**PHILIP J. TOMASHEK, II**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 2:17-cv-01904  
(Formerly Kanawha County Circuit  
Court Civil Action No.: 16-C-1731)**

**RALEIGH COUNTY EMERGENCY  
OPERATING CENTER, an instrumentality  
of Raleigh County, West Virginia, JOHN  
ZILINKSKI, individually and in his  
capacity as the Director of the Raleigh  
County Emergency Operating Center,  
JANE DOE Dispatcher, individually and in  
her capacity as a dispatcher with the  
Raleigh County Emergency Operating  
Center. RALEIGH COUNTY SHERIFF'S  
OFFICE, an instrumentality of Raleigh  
County, West Virginia and a political  
subdivision of the State of West Virginia,  
ROBERT STEVEN TANNER, individually  
and in his capacity as Sheriff of Raleigh  
County, A.S. MEADOWS, individually and  
in his capacity as officer with the Raleigh  
County Sheriff's Office, J.D. JOHNSON,  
individually and in his capacity as an officer  
with the Raleigh County Sheriff's Office,  
THE COUNTY COMMISSION OF  
RALEIGH COUNTY, a statutory  
corporation and political subdivision of the  
State of West Virginia, WEST VIRGINIA  
REGIONAL JAIL & CORRECTIONAL  
FACILITY AUTHORITY, a corporate  
body and instrumentality of the State of  
West Virginia, DAVID A. FARMER,  
individually and in his capacity as Executive  
Director of the West Virginia Regional Jail  
& Correctional Facility Authority,  
SOUTHERN REGIONAL JAIL, an  
instrumentality of the State of West  
Virginia, MICHAEL FRANCIS,  
individually and in his capacity as  
Administrator of Southern Regional Jail,  
JOHN DOE Correctional Officers,  
individually and in their capacity as officers  
for Southern Regional Jail,**

**Defendants.**

**NOTICE OF REMOVAL**

**NOW COME** the Defendants, Raleigh County Commission, Raleigh County Sheriff's Office, Robert Tanner, A.S. Meadows, and J.D. Johnson (hereinafter collectively referred to as "Defendants"), pursuant to 28 U.S.C. §§ 1441, 1443, 1446, 1331, and 1367(a), by and through their counsel, Chip E. Williams, Kevin J. Robinson, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, and hereby give notice of removal of the case *sub judice*, Civil Action No. 16-C-1731, from the Circuit Court of Kanawha County, West Virginia, to the United States District Court for the Southern District of West Virginia. In support of this Notice of Removal, the Defendants hereby state as follows:

1. On or about December 22, 2016, the Plaintiff, Philip J. Tomashek II (hereinafter "Plaintiff"), instituted the present civil action by filing a Complaint in the Circuit Court of Kanawha County, West Virginia designated Civil Action No. 16-C-1731, and seeking the issuance of Summonses for the Defendants. Copies of the original Summonses and Complaint are collectively attached hereto as "Exhibit A."
2. In his Complaint, the Plaintiff asserted many federal claims including but not limited to violations under 42 U.S.C. §1983 for excessive force, denial of procedural due process, and deliberate indifference to serious medical needs of a pre-trial detainee. In addition, the Plaintiff claims that the Raleigh County Sheriff's Office and the Raleigh County Commission developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of persons in and around Raleigh County, West Virginia, which caused a violation of the Plaintiff's constitutional rights.

3. This Notice of Removal is being filed within thirty (30) days after the Defendants' receipt of the Plaintiff's Complaint which raises claims removable to the United States District Court for the Southern District of West Virginia.
4. This Court has "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 25 U.S.C. §1331.
5. Removal of this action to the United States District Court for the Southern District of West Virginia is proper pursuant to 28 U.S.C. §§ 1441, 1443, 1446, 1331, and 1367(a).
6. In accordance with Section 28 U.S.C. §1446(a), these Defendants state that the Summonses and Complaint constitute all the process, pleadings, and orders served upon these Defendants. A certified copy of the Docket Sheet for Civil Action No. 16-C-1731 is attached hereto as "Exhibit B."
7. Pursuant to the provisions of Section 28 U.S.C. §1446(a), all of the Defendants heretofore served with the Complaint remove this action to the United States District Court for the Southern District of West Virginia.
8. A true and correct copy of this "Notice of Removal" will be promptly filed with the Circuit Clerk of Kanawha County, West Virginia, and written notice thereof is given to counsel for the Plaintiff in accordance with 28 U.S.C. § 1446(b). A copy of the Notice of Filing of Notice of Removal is attached hereto as "Exhibit C."

**WHEREFORE**, the Defendants, Raleigh County Commission, Raleigh County Sheriff's Office, Robert Tanner, A.S. Meadows, and J.D. Johnson, hereby remove the above-referenced civil action from the Circuit Court of Kanawha County, West Virginia, to the United States District Court for the Southern District of West Virginia, and that said State Court may proceed no further with this



action.

By Counsel,

/s/ Kevin J. Robinson

Chip E. Williams, WV State Bar No. 8116

Kevin J. Robinson, WV State Bar No. 10181

***PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC***

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Defendants.

**CERTIFICATE OF SERVICE**

The undersigned, counsel of record for Defendants, does hereby certify on this 16<sup>TH</sup> day of March, 2017, that a true copy of the foregoing "***Notice of Removal***" was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

Marvin W. Masters, Esquire  
Kimberly K. Parmer  
The Masters Law Firm, LC  
181 Summers Street  
Charleston, WV 25301  
Counsel for Plaintiff

/s/ ***Kevin J. Robinson***

Chip E. Williams, WV State Bar No. 8116  
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